

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: JOHN SEIDNER

| | | |
|-------------------------|---|----------------------|
| Dave Kemp |) | CASE NO. 07-41149 |
| 7221 Chippewa Road |) | |
| Medina, OH 44256 |) | JUDGE KAY WOODS |
| |) | |
| and |) | |
| |) | |
| Francine Kemp |) | ADV. PROC. NO. _____ |
| 7221 Chippewa Road |) | |
| Medina, OH 44256 |) | |
| |) | |
| and |) | |
| |) | |
| Robert A. Furr |) | |
| 625 Pronto Street |) | |
| Lodi, OH 44254 |) | |
| |) | |
| and |) | |
| |) | |
| Ben Kemp |) | |
| 7933 Rodgers Road |) | |
| Lodi, OH 44254 |) | |
| |) | |
| and |) | |
| |) | |
| Diana Kemp |) | |
| 7933 Rodgers Road |) | |
| Lodi, OH 44254 |) | |
| |) | |
| and |) | |
| |) | |
| Kenneth Kiemschies |) | |
| 556 Twilight Trail |) | |
| Chippewa Lake, OH 44215 |) | |
| |) | |
| and |) | |

James T. Mapes
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and

Kirk Shadi
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and

Sharon Simpson
232 Fredrick Street
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and

Charles Stangel
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and

Diana Sutton
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and

Steve Sutton
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and

Andrea Watkins
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and

John Watkins
P.O. Box 261

N. Myrtle Beach, SC 29597-0261)
)
and)
)
Stephen Wood)
9415 Daniels Rd)
Seville, OH 44273)
)
Plaintiffs,)
)
v.)
)
John Seidner)
18131 Gulf Boulevard, Suite E)
Redington Shores, FL)
)
Defendant.)

COMPLAINT OF PLAINTIFFS TO DETERMINE
THE DISCHARGABILITY OF DEBTS

Now come the Plaintiffs, by and through undersigned counsel, and for their Complaint against the Defendants hereby state and allege as follows:

1. This is an action to determine the dischargeability of a debt based upon Defendant's fraudulent conduct in handling funds of Plaintiffs.
2. This Court has jurisdiction over this adversary proceeding to contest the dischargeability of certain debts of Defendant and is being brought pursuant to 28 U.S.C., Sections 1334(b), 157(b)(1), and 157(b)(2)(I) and 11 U.S.C. Section 523.
3. The Defendant is a debtor before the Court, having commenced a Chapter 7 Case on May 16, 2007 by the filing of a Voluntary Petition for Relief under Chapter 7, Title XI, United States Code. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).
4. Plaintiffs were not listed as creditors on the Schedule F filed by the Defendant as required by law, but instead were listed as a pending lawsuit on the Statement of Financial Affairs.

5. Defendant's counsel, Richard G. Zellers, indicated at the First Meeting of Creditors on July 24, 2007, that he would be amending the Schedule F to add Plaintiffs.
6. To date, Defendant's counsel has failed to amend Schedule F.
7. Defendant conspired with Blake Reno ("Reno") in a "flipping scheme".
8. Reno, through his various corporations, would contact persons in blighted areas in Youngstown and Akron to determine if they wished to sell their property.
9. If they did wish to sell their properties, Reno would negotiate a price at the actual value of the property, i.e. \$10,000.00.
10. Reno, to foster this scheme, would then contact persons, such as Plaintiffs, who are ordinary working class individuals with good credit, to become the actual purchaser of these properties.
11. Reno informed Plaintiffs that there would be no down payment; that he would assist them in obtaining bank financing for the properties, that his construction would rehabilitate the property, and that his leasing company would find renters for the property.
12. In order to further this scheme, Reno, also, promised that the leasing company would pay the mortgage, insurance, taxes and an additional \$100.00, per month, for a period of two years after the sale.
13. Reno, further, promised that the work on the properties would greatly increase the value of the properties.
14. Once Plaintiffs agreed to purchase the properties, Reno, had appraisers prepare appraisals for the properties at a greatly inflated value, i.e. \$40,000.00.
15. Reno and his co-conspirators informed Plaintiffs that they would be purchasing a property worth \$40,000.00.

16. Reno made certain that Plaintiffs used Defendant's title company.
17. Through a mortgage broker associate, Reno, would then submit a loan application to a bank to obtain a loan using the fraudulent appraisals. The bank would then agree to loan the funds up to \$40,000.00, minus the down payment.
18. Instead of a down payment, Reno had Plaintiffs sign a mortgage to the seller to finance the down payment. The seller of the property, under the direction of Defendant, assigned this mortgage to CELCO (another of Reno's corporations) for minimal consideration.
19. Defendant notarized and recorded these bogus mortgages.
20. In order to make the banks believe that a down payment had been made, Reno, would place funds in a bank account in the name of Plaintiffs and have a counter check issued for those funds. This counter check would then be faxed to Defendant at his title company, who would in turn fax the counter check to the bank.
21. Defendant, in addition illegally led the lender believe he was in possession of the actual funds for the down payment. Once this was accomplished, Defendant destroyed the bogus counter check.
22. At closing, Defendant, obtained the loan funds from the lender based upon the inflated appraisal and paid the seller the original amount negotiated by Reno (i.e 10,000).
23. Defendant took a portion of the funds and contrary to his fiduciary capacity as escrow agent, paid a majority of the remaining portion to the fictitious CELCO without the consent of Plaintiffs or the lender.
24. In some cases, roughly \$30,000 would be paid to CELCO.

25. Defendant conspired to insure these loans happened so quickly that the lenders did not become aware of the fraud. For instance, one of the Plaintiffs earning an annual income of \$30,000.00 purchased 17 properties with his credit.
26. This scheme was committed on the sale of 63 properties to Plaintiffs.
27. Defendant misappropriated Plaintiffs' loan proceeds without their knowledge or consent.
28. Defendant misrepresented to Plaintiffs that the properties listed were worth far more than their fair market value.
29. Defendant made such statements when he knew or should have known these statements were false.
30. The representations made Defendant were material to the transactions.
31. The willful representations were made with the intent of misleading the Plaintiffs into relying on said statements.
32. The Plaintiffs were justified in relying on the representations made by the Defendant and did so in fact, rely.
33. As a result of Defendant's, fraudulent and malicious misrepresentations and misconduct, the Plaintiffs have suffered injury and will continue to suffer damage.
34. Plaintiffs assert that the debt that should be listed on Defendant's Bankruptcy Petition and Schedules arose out of fraudulent misrepresentations and misconduct by the Defendant.
35. Plaintiffs filed the pending action against Defendant and many others involved in the scheme in Medina Common Pleas Court, Case Number 04 CIV 0171.
36. Plaintiffs assert that the debt that should be listed by Defendant in his bankruptcy is not dischargeable under §523(A)(2) because it is based on false representations and actual fraud. §523(A) provides as follows:

A discharge under §727 of this Title does not discharge an individual debtor from any debt ... (2) for money, property, services or an extension, renewal, or refinancing of credit to the extent obtained, by (a) false pretenses, a false representation or actual fraud.

37. Plaintiffs assert that the debt that should be listed by Defendant in his bankruptcy is not dischargeable under §523(a)(4) because it is based on fraud Defendant committed while acting as the escrow agent in his fiduciary capacity. §523(a) provides as follows:

A discharge under §727 of this Title does not discharge an individual debtor from any debt ... (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

38. Plaintiffs assert that the debt that should be listed by Defendant in his bankruptcy is not dischargeable under §523(a)(6) because the egregious acts committed by Defendant caused willful and malicious injury to the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully prays for the following relief, conditioned as set forth above that this Court determine and enter judgment that the debt in the total amount due to Plaintiffs together with statutory interest, plus court costs, advances, attorney fees and other charges as allowed by law, is non-dischargeable;

Respectfully submitted,

/s/ A. Michelle Jackson
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